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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sportswear Corporation of America

Serial No. 74/356,328

Myron Amer for Sportswear Corporation of America

Michael Levy, Trademark Examining Attorney, Law Office 107
(Thomas Lamone, Managing Attorney)

Before Rice, Hanak and Hairston, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Sportswear Corporation of America (applicant) seeks
registration of MICHAEL BERNARD in typed capital letters for
"sportswear, namely, tops and bottoms." The intent-to-use
application was filed on February 8, 1993.

The Examining Attorney refused registration pursuant to
section 2(d) of the Lanham Trademark Act on the basis that
applicant's mark, as applied to tops and bottoms, is likely
to cause confusion with the mark MICHEL BERNARD, previously

registered in typed capital letters for "watches."

Registration No. 1,890,492.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.")

In this case, the marks are very similar. Hence, the issue of likelihood of confusion turns primarily upon the "differences in the essential characteristics of the goods."

The Examining Attorney contends that "the Trademark Trial and Appeal Board has specifically held that apparel and watches are commercially related for purposes of a Section 2(d) analysis. See David Crystal, Inc. v. Dawson, 156 USPQ 573 (TTAB 1967)." (Examining Attorney's brief page 6). The Examining Attorney has simply misread the holding of David Crystal. In that case, the opposer had made of record extensive evidence showing "that jewelry and women's wearing apparel are sold and promoted through the same channels of trade to the same classes of purchasers, are displayed and worn together [and] may be purchased at the same time for coordinated wardrobes." 156 USPQ at 574

(emphasis added). Indeed, in David Crystal the applicant even "acknowledged that jewelry and wearing apparel have been promoted together and that department stores and clothing stores sell jewelry as well as clothing." 156 USPQ at 574 (emphasis added). In David Crystal, there was no discussion of watches, nor even a remote suggestion that watches were somehow encompassed by the term "jewelry." Thus, David Crystal in no way supports the Examining Attorney's contention "that apparel and watches are commercially related for purposes of a Section 2(d) analysis." (Examining Attorney's brief page 6).

We find that watches are clearly distinct from apparel. Each serves a different purpose. In addition, unlike apparel, watches have mechanical and/or electronic components.

Given the significant dissimilarities between applicant's goods (sportswear, namely, tops and bottoms) and the goods of the cited registration (watches), we find that the use of very similar marks on such diverse goods would not result in a likelihood of confusion unless one of the marks was famous or a recognized designer name. In this case, there is absolutely no evidence of record showing that the cited mark, which according to the registration has only been used since 1994, has achieved any fame. This is in clear contrast to the situation in David Crystal, where the Board, in finding likelihood of confusion resulting from the contemporaneous use of very similar marks on jewelry and

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apparel, took specific note of the fact that opposer had proven that its marks were "well known ... in the garment industry." 156 USPQ at 574.

Decision: The refusal to register is reversed.

J. E. Rice

E. W. Hanak

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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